

# FROST & JACOBS LLP

EPA Region 5 Records Ctr.



275554

2500 PNC CENTER  
201 EAST FIFTH STREET  
CINCINNATI, OHIO 45202-4182  
(513) 651-6800 • FACSIMILE: (513) 651-6981  
WWW.FROJAC.COM

COLUMBUS OFFICE  
ONE COLUMBUS, SUITE 1000  
10 WEST BROAD STREET  
COLUMBUS, OHIO 43215-3467  
(614) 464-1211  
FACSIMILE: (614) 464-1737

MIDDLETOWN OFFICE  
400 FIRST NATIONAL BANK BUILDING  
2 NORTH MAIN STREET  
MIDDLETOWN, OHIO 45042-1981  
(513) 422-2001  
FACSIMILE: (513) 422-3010

KENTUCKY OFFICE  
1100 VINE CENTER TOWER  
333 WEST VINE STREET  
LEXINGTON, KENTUCKY 40507-1634  
(606) 254-1100  
FACSIMILE: (606) 253-2990

KEVIN N. McMURRAY  
kmcemurray@frojac.com  
(513) 651-6160

June 3, 1999

**FOR SETTLEMENT PURPOSES ONLY  
PROTECTED FROM DISCLOSURE  
UNDER FRE 408**

Sherry Estes, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Boulevard (C-29A)  
Chicago, Illinois 60604

Re: Hilton-Davis Company – Skinner Landfill, West Chester, Ohio – *De Minimis*  
Settlement

Dear Ms. Estes:

We are legal counsel to Hilton-Davis Company (“Hilton-Davis”) in connection with the above-referenced matter. As you may be aware, Hilton-Davis entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action pending in the United States District Court for the Southern District of Ohio. In addition to providing for, among other things, settlement of Plaintiffs’ claims for past and future costs and expenses incurred and to be incurred at or in connection with the Skinner Site, that agreement requires certain of the Plaintiffs to attempt to negotiate a *de minimis* settlement between Hilton-Davis (and all other settling *de minimis* parties) and the United States (on behalf of U.S. EPA) that is at least as protective of the Company’s interests as are the terms of U.S. EPA’s Model *De Minimis* Consent Decree set forth in the December 7, 1995 *Federal Register*.

It is Hilton-Davis’ understanding that U.S. EPA Region V has now determined that the Agency can proceed with *de minimis* settlement negotiations and has identified what information it will require in order to confirm that Hilton-Davis qualifies for a *de minimis* settlement at this Site. We understand that the required information consists of: (i) the summary of each *de minimis* settlor’s waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Site Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator’s findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

FROST & JACOBS LLP

Sherry Estes, Esq.  
June 3, 1999  
Page 2

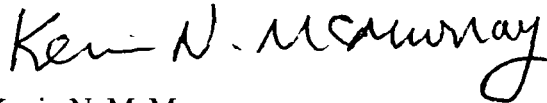
Accordingly, I am enclosing the information requested by U.S. EPA for Hilton-Davis. I believe that this information amply demonstrates that Hilton-Davis is entitled to a *de minimis* settlement consistent with U.S. EPA's model *de minimis* consent decree. Hilton-Davis understands that U.S. EPA and the Plaintiffs will allocate among themselves the monies to be paid by Hilton-Davis and the other *de minimis* settlers in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Hilton-Davis does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Hilton-Davis is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the Company strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

FROST & JACOBS LLP

A handwritten signature in black ink, reading "Kevin N. McMurray". The signature is written in a cursive, flowing style.

Kevin N. McMurray  
Counsel for Hilton-Davis Company

KNM:llb  
Enclosures  
cc: Elliott Stern, Esq. (w/encls.)

MAY 24 1999

**Hilton-Davis Company**

SHH

Settlement Amount: \$2,000.00

**Excerpt from Allocator's Preliminary Report :**

Hilton Davis has had a facility at 2235 Langdon Farm Road in Cincinnati since 1917. Its response to the ADR Questionnaire regarding the time period of ownership or operation stated that from 1917 - 1942 the facility was owned by Hilton Davis; from 1942 - 1986 it was owned by Sterling Drugs; from 1986 - 1990, it was owned by PMC, Inc.; and from 1991 - present it has been owned by Freedom Chemical Company. It is not clear, but it appears that Hilton Davis was the operator during this entire time frame. In the company's 1994 response to the EPA's 104(e) request, it stated that on September 9, 1993, 100% of the stock of Hilton Davis was purchased by Freedom Chemical Acquisition Corp. and the company became a wholly-owned subsidiary of this entity. Colorants, dyes and pharmaceutical intermediates were manufactured at the facility.

In addressing its waste streams, Hilton Davis explained it generated wastewater that was discharged off-site through the Bloody Run ravine and into the Ohio River prior to 1954, and thereafter was treated in on-site lagoons and discharged to the POTW. Prior to approximately 1970, solid wastes were disposed of in an on-site ravine (which was closed in 1980). Through the 1970s and into the 1980s, the company used the Rumpke landfill, Elda landfill and Chemical Waste Management landfill in Emmelle, AL.

With respect to the disposal of sludge, Hilton Davis submitted a copy of a handwritten note dated December 17, 1973 which said that a quote should be obtained from Rumpke for disposal of "approximately 20,000 cubic yards of accumulated sludge from our lagoons." The note indicated that material would go to the Rumpke dump. A responsive letter dated August 28, 1974 from Rumpke contained a proposal for "Desludging Effluent Lagoons." An Ohio EPA letter dated June 25, 1976 to BFI responded to a BFI proposal to dispose of lagoon sludge from Hilton Davis and contained analytical results of sludge tests. An interoffice memo dated March 1, 1976 stated that a representative of BFI came to the plant to view the no. 1 and 2 lagoons and samples were collected for analysis. The BFI representative was to contact a Kentucky official to request permission apparently for disposal in that state. A letter from Environmental Enterprises Incorporated to Hilton Davis dated October 15, 1976 summarized a meeting held three days earlier regarding obtaining "Ohio EPA approval for land disposal of the Hilton Davis sludge." An attached environmental impact statement referred to disposal of 5,800 cubic yards of "wastewater residual from the manufacturing of numerous chemical intermediates" at the Elda landfill in Cincinnati. Analytical results were attached.

An interoffice memo dated April 10, 1979 listed the hazardous wastes generated at the facility with approximate annual volumes and the methods of disposal. According to this memorandum, fly ash [7,500 cy/year] was removed by the Holden Co. for use in cinder block manufacture; chemical semi-solid wastes [2,000 drums/year] were removed by BFI and sent to the Bobmeyer Landfill; solid wastes [1,500 cy/year] and used fiber drums [15,000/year] were collected and disposed of by BFI at the Elda Landfill; hydrocarbon waste solvents [65,000 gals/year] were incinerated on-site; chlorinated sulfur or nitrogen-containing waste

solvents [2,000 gals/year] were stored "for disposal at the Metropolitan Sewer District incinerator, which is to be completed in the next few months"; iron sludge and miscellaneous solid wastes [4,500 yds/year] were disposed of on-site; zinc sludge [195 tons/year] were stored and sold, except during freezing weather.

A June 3, 1980 interoffice memorandum stated that certain wastes had accumulated during the past month and the company should make every effort to complete negotiations with Alabama Waste Management [apparently affiliated with Chemical Waste Management] to dispose of these materials. The company also submitted copies of several memoranda dated during 1980 and 1981 from the Ohio EPA to BFI or Waste Management regarding disposal of waste from Hilton Davis at various landfills. Skinner is not mentioned.

A 1980 Annual Hazardous Waste Report stated that 5,000 lbs. of mixed spent solvents were transported by the Maxwell Company. Maxwell was referenced in the 1981 report as well.

The company submitted an affidavit of Harold Hornbeck, a former plant manager, who worked there from 1947 - 1986 and who was the manager of environmental and safety affairs from 1981 - 1986. He stated that, prior to 1954, Hilton Davis disposed of its wastewaters through the sewer lines as well as to the on-site Bloody Run ravine. In 1954, it constructed wastewater lagoons to neutralize the wastewater before it was discharged to the Metropolitan Sewer District. Also, many liquid waste streams were burned or incinerated in the boiler room. The resulting waste stream was disposed of through the stacks in the boiler room as a vapor and the remaining sludge and ash was disposed of in the on-site ravine. Construction debris and other solid waste were disposed of in the ravine which was closed in 1980. He recalled that John Franz, now deceased, was the person responsible for disposal arrangements and they had a number of conversations about off-site disposal sites for solid waste. He stated that the company used the Rumpke landfill, BFI Bobmeyer landfill, Waste Management Elda landfill, a site in Northern KY owned by Bavarian, and a site in Emmelle, AL. He knew of no disposal at the Skinner Site. He also stated that it would make no sense for Hilton Davis to dispose of waste at Skinner because of the on-site ravine and the close proximity of the Bobmeyer, Elda and Rumpke landfills.

The company also submitted copy of a 1987 employee interview report, apparently prepared by a consultant in connection with an Ohio EPA investigation of on-site contamination at its plant. On page 15, the statement is made that "Trash was transported to local landfills." On page 19, there is a list of transporters which hauled drummed or tanked waste from the facility -- Chem Waste, BFI, Montgomery & Son, Maxwell, Rumpke, and McCraig.

Hilton Davis said that Chemical Leaman hauled raw materials to the company's facility but did not haul waste for the company. Hilton Davis's position is that any disposal at Skinner from tank washing would not constitute disposal of waste by the company. The company stated that it did not use Chem-Dyne and was not a PRP at that site.

Hilton Davis submitted BFI invoices covering the following time frames: late 1988, 1989, 1990 and subsequent years. There are multiple invoices for these months but it is not possible to determine what wastes were picked up or where they were disposed of.

The testimony with respect to Hilton Davis was quite weak. My deposition tables reflect that Ray Skinner told me that he remembered only that his father or brother talked about Hilton Davis as a Landfill customer dating back to the 1960s or before. At the time he was asked, he could not recall where Hilton Davis was located. Perhaps I am simply dulled by the process, but I have been unable to find this testimony in the Ray Skinner deposition transcript. Elsa Skinner recalled the name, said it was a customer, but did not know whether

Excerpt from Allocator's Final Report :

See the Avon Products, Inc. discussion.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372908	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
HILTON DAVIS COMPANY	50	0	372908	0.0134%	262252	0.0000%	0.00%	0.00%			0.00134%

**FROST & JACOBS LLP**

2500 PNC CENTER  
201 EAST FIFTH STREET - P.O. BOX 5715  
CINCINNATI, OHIO 45201-5715  
(513) 651-6800  
COMMUNICATIONS CENTER (513) 651-6775  
FAX COVER SHEET

**TOTAL NUMBER OF PAGES  
INCLUDING THIS SHEET**

4

**TO:** Craig Melodia

**FAX NO.:** (312) 886-7160

**FROM:** Steve Haughey

**TELEPHONE NO.:** (513) 651-6127

**DATE:** 8/30/99

**CONFIRM FAX SENT/RETURN ORIGINAL TO:** JJ **EXT.:** 6435

**COMMENTS**

THE INFORMATION CONTAINED IN THIS FAX IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, ATTORNEYS' WORK PRODUCT AND/OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT (OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT), YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE.

**CINCINNATI FAX NUMBER:**

(513) 651-6981

**OTHER OFFICES (FAX NUMBER)**

COLUMBUS, OH (614) 464-1737  
MIDDLETOWN, OH (513) 422-3010  
FRANKFORT, KY (502) 223-1400  
LEXINGTON, KY (606) 253-2990

No Original Docs will follow unless requested

**HILTON DAVIS CHEMICAL COMPANY ("Hilton Davis")**

Hilton Davis has had a facility at 2235 Langdon Farm Road in Cincinnati since 1917. Its response to the ADR Questionnaire regarding the time period of ownership or operation stated that from 1917 - 1942 the facility was owned by Hilton Davis; from 1942 - 1986 it was owned by Sterling Drugs; from 1986 - 1990, it was owned by PMC, Inc.; and from 1991 - present it has been owned by Freedom Chemical Company. It is not clear, but it appears that Hilton Davis was the operator during this entire time frame. In the company's 1994 response to the EPA's 104(e) request, it stated that on September 9, 1993, 100% of the stock of Hilton Davis was purchased by Freedom Chemical Acquisition Corp. and the company became a wholly-owned subsidiary of this entity. Colorants, dyes and pharmaceutical intermediates were manufactured at the facility.

In addressing its waste streams, Hilton Davis explained it generated wastewater that was discharged off-site through the Bloody Run ravine and into the Ohio River prior to 1954, and thereafter was treated in on-site lagoons and discharged to the POTW. Prior to approximately 1970, solid wastes were disposed of in an on-site ravine (which was closed in 1980). Through the 1970s and into the 1980s, the company used the Rumpke landfill, Elda landfill and Chemical Waste Management landfill in Emmelle, AL.

With respect to the disposal of sludge, Hilton Davis submitted a copy of a handwritten note dated December 17, 1973 which said that a quote should be obtained from Rumpke for disposal of "approximately 20,000 cubic yards of accumulated sludge from our lagoons." The note indicated that material would go to the Rumpke dump. A responsive letter dated August 28, 1974 from Rumpke contained a proposal for "Desludging Effluent Lagoons." An Ohio EPA letter dated June 25, 1976 to BFI responded to a BFI proposal to dispose of lagoon sludge from Hilton Davis and contained analytical results of sludge tests. An interoffice memo dated March 1, 1976 stated that a representative of BFI came to the plant to view the no. 1 and 2 lagoons and samples were collected for analysis. The BFI representative was to contact a Kentucky official to request permission apparently for disposal in that state. A letter from Environmental Enterprises Incorporated to Hilton Davis dated October 15, 1976 summarized a meeting held three days earlier regarding obtaining "Ohio EPA approval for land disposal of the Hilton Davis sludge." An attached environmental impact statement referred to disposal of 5,800 cubic yards of "wastewater residual from the manufacturing of numerous chemical intermediates" at the Elda landfill in Cincinnati. Analytical results were attached.

An interoffice memo dated April 10, 1979 listed the hazardous wastes generated at the facility with approximate annual volumes and the methods of disposal. According to this memorandum, fly ash [7,500 cy/year] was removed by the Holden Co. for use in cinder block manufacture; chemical semi-solid wastes [2,000 drums/year] were removed by BFI and sent to the Bobmeyer Landfill; solid wastes [1,500 cy/year] and used fiber drums [15,000/year] were collected and disposed of by BFI at the Elda Landfill; hydrocarbon waste solvents [65,000 gals/year] were incinerated on-site; chlorinated sulfur or nitrogen-containing waste solvents [2,000 gals/year] were stored "for disposal at the Metropolitan Sewer District incinerator, which is to be completed in the next few months"; iron sludge and miscellaneous solid wastes [4,500 yds/year] were disposed of on-site; zinc sludge [195 tons/year] were stored and sold, except during freezing weather.



A June 3, 1980 interoffice memorandum stated that certain wastes had accumulated during the past month and the company should make every effort to complete negotiations with Alabama Waste Management [apparently affiliated with Chemical Waste Management] to dispose of these materials. The company also submitted copies of several memoranda dated during 1980 and 1981 from the Ohio EPA to BFI or Waste Management regarding disposal of waste from Hilton Davis at various landfills. Skinner is not mentioned.

A 1980 Annual Hazardous Waste Report stated that 5,000 lbs. of mixed spent solvents were transported by the Maxwell Company. Maxwell was referenced in the 1981 report as well.

The company submitted an affidavit of Harold Hombeck, a former plant manager, who worked there from 1947 - 1986 and who was the manager of environmental and safety affairs from 1981 - 1986. He stated that, prior to 1954, Hilton Davis disposed of its wastewaters through the sewer lines as well as to the on-site Bloody Run ravine. In 1954, it constructed wastewater lagoons to neutralize the wastewater before it was discharged to the Metropolitan Sewer District. Also, many liquid waste streams were burned or incinerated in the boiler room. The resulting waste stream was disposed of through the stacks in the boiler room as a vapor and the remaining sludge and ash was disposed of in the on-site ravine. Construction debris and other solid waste were disposed of in the ravine which was closed in 1980. He recalled that John Franz, now deceased, was the person responsible for disposal arrangements and they had a number of conversations about off-site disposal sites for solid waste. He stated that the company used the Rumpke landfill, BFI Bobmeyer landfill, Waste Management Elda landfill, a site in Northern KY owned by Bavarian, and a site in Emmelle, AL. He knew of no disposal at the Skinner Site. He also stated that it would make no sense for Hilton Davis to dispose of waste at Skinner because of the on-site ravine and the close proximity of the Bobmeyer, Elda and Rumpke landfills.

The company also submitted copy of a 1987 employee interview report, apparently prepared by a consultant in connection with an Ohio EPA investigation of on-site contamination at its plant. On page 15, the statement is made that "Trash was transported to local landfills." On page 19, there is a list of transporters which hauled drummed or tanked waste from the facility - Chem Waste, BFI, Montgomery & Son, Maxwell, Rumpke, and McCraig.

Hilton Davis said that Chemical Leaman hauled raw materials to the company's facility but did not haul waste for the company. Hilton Davis's position is that any disposal at Skinner from tank washing would not constitute disposal of waste by the company. The company stated that it did not use Chem-Dyne and was not a PRP at that site.

Hilton Davis submitted BFI invoices covering the following time frames: late 1988, 1989, 1990 and subsequent years. There are multiple invoices for these months but it is not possible to determine what wastes were picked up or where they were disposed of.

The testimony with respect to Hilton Davis was quite weak. My deposition tables reflect that Ray Skinner told me that he remembered only that his father or brother talked about Hilton Davis as a Landfill customer dating back to the 1960s or before. At the time he was asked, he could not recall where Hilton Davis was located. Perhaps I am simply dulled by the process, but I have been unable to find this testimony in the Ray Skinner deposition transcript. Elsa Skinner recalled the name, said it was a customer, but did not know whether

it was a customer one time or a hundred times. E. Skinner Depo., p. 370-71. She could provide no other details. Maria Roy recalled that Hilton Davis was a customer of her father's, that being a customer of her father meant that there was some demolition debris, and that if there was demolition debris, her father always brought it back to the Landfill for dumping. M. Roy Depo., p. 239-43.

Dervin Spears, a telephone interviewee and former driver for Clarke and BFI, said that he thought that some Hilton Davis roll off waste reached the Skinner Landfill based on what other drivers said or based on driver radio conversation.

**Waste-in Amount.** I think there is probably just enough evidence to raise a fact dispute on Hilton Davis's connection to the Skinner Landfill. On balance, for purposes of this process, I am assigning Hilton Davis a default waste-in amount of 50 cys which is intended to represent demolition debris to account for fact disputes raised by the witnesses' statements vis-a-vis Hilton Davis's investigation.

In regard to the investigation, I have read all of the exchanges between counsel about the thoroughness of Hilton Davis's investigation. In the circumstances of this matter, I have found Hilton Davis's responses to the questionnaire, as explicated by its June 12, 1998 letter, to be satisfactory.